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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,628	12/30/2003	Brian Alan Grove	2043.100US1 9864	
49845 7590 01/10/2008 SCHWEGMAN, LUNDBERG & WOESSNER/EBAY P.O. BOX 2938			EXAMINER	
			HAQ, NAEEM U	
MINNEAPOLI	MINNEAPOLIS, MN 55402		ART UNIT	PAPER NUMBER
		3625		
			NOTIFICATION DATE	DELIVERY MODE
		•	01/10/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTO@SLWIP.COM

•		Application No.	Applicant(s)	
		10/749,628	GROVE ET AL.	
	Office Action Summary	Examiner	Art Unit	
		Naeem Haq	3625	
Period fo	The MAILING DATE of this communication app or Reply	pears on the cover sheet with the c	orrespondence address	
A SHOWHIC - External after - If NO - Failu Any o	ORTENED STATUTORY PERIOD FOR REPLY CHEVER IS LONGER, FROM THE MAILING DANSIONS of time may be available under the provisions of 37 CFR 1.13 SIX (6) MONTHS from the mailing date of this communication. Poperiod for reply is specified above, the maximum statutory period were to reply within the set or extended period for reply will, by statute, reply received by the Office later than three months after the mailing and patent term adjustment. See 37 CFR 1.704(b).	ATE OF THIS COMMUNICATION 36(a). In no event, however, may a reply be timusely and will expire SIX (6) MONTHS from a cause the application to become ABANDONE	N. sely filed the mailing date of this communication. D (35 U.S.C. § 133).	
Status				
2a)⊠	Responsive to communication(s) filed on 10 Octoor This action is FINAL . 2b) This Since this application is in condition for allower closed in accordance with the practice under Exercise 10 octoor 10 octoo	action is non-final. nce except for formal matters, pro	· ·	
Dispositi	ion of Claims	•		
5) □ 6) ☑ 7) □ 8) □ Applicati 9) □ 10) □	Claim(s) 1-28 is/are pending in the application. 4a) Of the above claim(s) is/are withdraw Claim(s) is/are allowed. Claim(s) 1-28 is/are rejected. Claim(s) is/are objected to. Claim(s) are subject to restriction and/or on Papers The specification is objected to by the Examine The drawing(s) filed on is/are: a) access applicant may not request that any objection to the Replacement drawing sheet(s) including the correct The oath or declaration is objected to by the Examine	wn from consideration. r election requirement. r. epted or b) objected to by the € drawing(s) be held in abeyance. See ion is required if the drawing(s) is obj	e 37 CFR 1.85(a). ected to. See 37 CFR 1.121(d).	
Priority u	ınder 35 U.S.C. § 119		•	
 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No. 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received. 				
2) 🔲 Notic 3) 🔯 Inforr	t(s) e of References Cited (PTO-892) e of Draftsperson's Patent Drawing Review (PTO-948) mation Disclosure Statement(s) (PTO/SB/08) r No(s)/Mail Date 10/15/2007.	4) Interview Summary Paper No(s)/Mail Da 5) Notice of Informal P 6) Other:	nte	

Application/Control Number: 10/749,628

Art Unit: 3625

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1, 3, 4, 7, 8, 10, 11, 14, 15, 17, 18, 21, 22, 24, 25, and 28 are rejected under 35 U.S.C. 102(e) as being anticipated by Xie et al. (US 7,006,987 B1) ("Xie").

Referring to claims 1, 7, 8, 14, 15, 21, 22 and 28: Xie teaches a network-based system including: a processor coupled to a memory through a bus; and a fixed price-setting process executed from the memory by the processor to cause the processor to facilitate the operation of a network-based auction price setting process for a listing of an item, to provide a fixed price offer for the item and to publish the fixed-price offer on the listing based on a criteria (col. 4, line 64 – col. 5, line 5; Figure 1, "S116").

Referring to claims 3, 10, 17, and 24: Xie teaches that the fixed-price offer is lower than a high proxy bid (claim 1).

Referring to claims 4, 11, 18, and 25: Xie teaches that the fixed-price-setting process further causes the processor to automatically designate a buyer associated with the high proxy bid as the winner of the auctioned item (col. 2, lines 3-11; col. 2, lines 46-53).

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 7, 8, 9, 16, 14, 15, 21, 22, 23, and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Fisher et al. (US 6,243,691 B1) ("Fisher").

Referring to claims 1, 7, 8, 14, 15, 21, 22 and 28: Fisher teaches a network-based system including: a processor coupled to a memory through a bus; and a fixed price-setting process executed from the memory by the processor to cause the processor to facilitate the operation of a network-based auction price setting process for a listing of an item, to provide a fixed price offer for the item and to publish the fixed-price offer on the listing based on a criteria (Figure 2, see "List Price").

Referring to claims 2, 9, 16, and 23: Fisher teaches that the fixed-price offer is higher than a current highest bid (Figure 2, see "The current high bidders are:").

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 5, 6, 12, 13, 19, 20, 26, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Xie et al. (US 7,006,987 B1) ("Xie") in view of Fisher et al. (US 6,243,691 B1) ("Fisher").

Referring to claims 5, 6, 12, 13, 19, 20, 26, and 27: Xie does not teach that the automatic designation is performed when the buyer has opted into being designated the winner automatically. However, Fisher teaches that the automatic designation is performed when the buyer has opted into being designated the winner automatically (col. 6, lines 15-43). Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the teachings of Fisher into the invention of Xie. One of ordinary skill in the art would have been motivated to do so in order to send a notification to the bidder, as taught by Fisher.

Response to Arguments

Applicants' arguments have been fully considered but they are not persuasive. The Applicants have argued that Xie teaches a "proxy bid" and not a "fixed price" (see Remarks pages 8 and 9). The examiner respectfully disagrees and notes that a "proxy bid" is nothing more than a fixed upper limit a bidder is willing to offer for an item. This fixed upper limit is a maximum price a bidder is willing to offer. Thus the "proxy bid" is a fixed maximum price offered by a bidder and therefore is a "fixed price".

The Applicants have also argued that Fisher fails to anticipate the claimed invention because Fisher is directed to a catalog page that contains a "List Price". (see Remarks page 11). The examiner respectfully disagrees. Fisher is directed to an online auction that displays a "fixed price" for an item. Thus, Fisher teaches more than just a catalog page.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Naeem Haq whose telephone number is (571)-272-6758. The examiner can normally be reached on M-F 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on (571)-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

January 4, 2008

PRIMARY EXAMINER